IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 186 of 2003

in

SPECIAL CIVIL APPLICATION No 11363 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

WESTERN INDIA PLYWOOD LTD

Versus

HIMMATLAL TRIBHOVANDAS RATHOD

Appearance:

1. LETTERS PATENT APPEAL No. 186 of 2003

MR SHUKLA for NANAVATI & NANAVATI for Appellant No.

MR RAJESH DAVE for MR PN BAVISHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. This Letters Patent Appeal is arising out of the judgment and order dated 30.4.2002 passed by the learned Single Judge of this court in Special Civil Application No.11363/94 whereby the learned Single Judge partly allowed the writ petition of the appellant-petitioner. For rest of the reliefs, which were not granted by the learned Single Judge in writ petition, present appeal is filed.

#. Mr.Rajesh Dave, learned counsel for the respondent raised preliminary objection about the maintainability of this appeal before this court on the ground that not only the petition was filed by the appellant-petitioner exclusively under Art.227 of the Constitution, but the learned Single Judge exercised his jurisdiction as such only under Art.227 of the Constitution of India, which is challenged in the present appeal. Therefore, the present appeal is not maintainable. In support of his submission reliance is placed for Mr.Dave on the Division Bench of this court in case of Ishwarbhai Narottambhai Patel v. K.H.Trivedi reported in 2003(3) GLR 1878. However, learned counsel Mr.Shukla for the appellant relying on the judgment of Hon'ble Supreme Court in case of Lokmat Newspapers Pvt. Ltd. v. Shankar Prasad (1999) 6 SCC 275 submitted that the present appeal would be maintainable. This very judgment of the Hon'ble Supreme Court in Lokmat's case (supra) was also considered by the Division Bench of this court in case of Ishwarbhai Narottambhai (supra) and having considered the same and other judgments of the Hon'ble Supreme Court as well as this court, it has been held that the appeal would not be maintainable.

#. In view of the above, without going into the merits of the case, this appeal is required to be dismissed as having not maintainable and accordingly it is dismissed.

#. At this stage, Mr.Dave brought to our notice that by way of interim order dated 4.11.2003 passed in the Civil Application No.9522 of 2002 filed in this appeal, interim stay against the impugned order was granted by the Division Bench of this court on the condition that the

appellant should deposit the entire amount payable under the award as modified by the learned Single Judge within four weeks from the date of the order before the Labour Court, Ahmedabad, failing which interim order was to be vacated. On depositing such amount, the respondent was permitted to withdraw that amount of gratuity of Rs.42,501/= without furnishing any security and allowed to withdraw further amount of Rs.1,00,000/= on furnishing security to the satisfaction of the Labour Court, Ahmedabad. Accordingly, the respondent had withdrawn Rs.1,00,000/= from the Labour Court, Ahmedabad by furnishing security. However, Mr.Dave submitted that remaining amount of Rs.55,700/= deposited before the Labour Court by the appellant has not been withdrawn so far by the respondent in view of the interim order dated 4.11.2003 passed by the Division Bench of this Court in Civil Application No.9522 of 2002, which may be now ordered to be paid to the respondent.

#. Once, the appeal of the appellant is dismissed, then the respondent would be entitled to withdraw remaining amount of Rs.55,700/= without furnishing any security. Earlier amount of Rs.1,00,000/= was withdrawn by the respondent by furnishing security, as per the interim order passed by the Division Bench of this court on 4.11.2003, therefore, the said security offered by the respondent stands cancelled.

With these observations and directions, this appeal stands dismissed with no order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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